

Part 2. Indemnification.

§ 58-65-166. Policy statement and definitions.

(a) It is the public policy of this State to enable corporations organized under this Chapter to attract and maintain responsible, qualified directors, officers, employees, and agents, and, to that end, to permit corporations organized under this Chapter to allocate the risk of personal liability of directors, officers, employees, and agents through indemnification and insurance as authorized in this Part.

(b) Definitions in this Part:

- (1) "Corporation" includes any not for profit domestic hospital, medical, or dental service corporation, or successor of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
- (2) "Director" or "Trustee" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" or "Trustee" includes, unless the context requires otherwise, the estate or personal representative of a director or trustee.
- (3) "Expenses" means expenses of every kind incurred in defending a proceeding, including counsel fees.
- (4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.
- (5) "Official capacity" means: (i) when used with respect to a director or trustee, the office of director or trustee in a corporation; and (ii) when used with respect to an individual other than a director or trustee, as contemplated in G.S. 58-65-172, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.
- (6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.
- (7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.
- (8) "Trustee". Whenever the term "director" or "directors" is used herein it shall include the term "trustee", or a person who is designated as a "trustee" under a corporation governed by this Article. (1989 (Reg. Sess., 1990), c. 1071, s. 1.)